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CONCORD, N.H.

1953

Mar. 5

Mr. Gilman K. Crowell, Director
Division of Food and Chemistry
State House

Dear Sir:

This will acknowledge your letter of February 27, 1953.

You have inquired as to whether or not frozen food locker plants should be required to obtain licenses as cold storage warehouses under the provisions of R. L. c. 163.

It is our opinion that such licenses are not required.

The cold storage warehouse act, now c. 163 of the Revised Laws, was originally enacted in 1917. At that time, frozen food storage as we know it today, was unknown. Cold storage then related to the storage of fresh foods at temperatures around or about 40° Fahrenheit. R. L. c. 163, § 1 defines cold storage as the "storage of articles of food at or below forty degrees Fahrenheit." Since storage of frozen foods is at temperatures around or about 0° Fahrenheit, the statutory definition of cold storage would seemingly apply. However, there are several points of difference which should be noted, which in our opinion make the provisions of R. L. c. 163 inapplicable.

First, frozen food locker plants rent locker space to individuals who store frozen food for their own consumption and not for resale at retail to the general public. This is an important point of difference. The stored food is under the control of the person renting locker space, not the owner of the locker plant. Any resale of such foods would be incidental to the primary purpose, which would be personal consumption.

A cold storage warehouse is understood, in the business sense, to mean a warehouse or storeroom used for the preservation of butter and eggs where the temperature is kept at a low degree but above the freezing point. *Allen v. Lemire*, 73 Conn. 355.

Mr. Gilman K. Crowell

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March 5, 1953

I realize that this letter contradicts a previous opinion given by Mr. D'Ameun in 1942. However, I feel that conditions have changed in the frozen food industry sufficiently in the past eleven years to justify overturning the prior decision. Indeed, if we are to require frozen food plants to have licenses under the provisions of Revised Laws chapter 163 we should also require all grocery stores and private homes having deep freeze units to take out a similar license. The same reasoning which would require the frozen food locker to have such a license would apply equally well in the other cases.

Very truly yours,

Henry Dowst, Jr.,
Assistant Attorney General

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